

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.33055 of 2016

and

W.M.P.No.28549 of 2016

1.K.Kubendran

2.K.Rajendran

3.K.Thirumal

4.K.Nithyanandam

5.K.Velu

...Petitioners

/vs/

1.The Commissioner,
HR & CE Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai 600 034.

2.The Joint Commissioner,
HR & CE Department,
Nungambakkam,
Chennai 600 034.

3.The Assistant Commissioner/Executive Officer,
Arulmigu Kapaleeswarar Thirukoil,
Mylapore, Chennai 600 004. ..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, directing the respondents to regularize the tenancy of the petitioners at premises bearing No.X-25, Canal Bank Road, Raja Annamalaipuram, Chennai 600 028, falling under Survey No.3968/14, Mylapore Village, Mylapore-Triplicane Taluk, Chennai, as requested by the petitioners in their representation dated 13.08.2016 and pass orders thereon in accordance with law.

For Petitioners

:Mr.K.S.Viswanathan

For Respondents

:Mr.M.Maharajan
Special Government Pleader

O R D E R

Heard Mr.K.S.Viswanathan, learned counsel appearing for the petitioners and Mr.M.Maharajan, learned Special Government Pleader appearing for the respondents/Department. By consent of the learned counsel for both sides, the writ petition is taken-up for final disposal.

2. In this writ petition, the petitioners seek for the issuance of a Writ of Mandamus, to direct the respondents to regularize the tenancy of the petitioners in respect of the premises bearing No.X-25 Canal Bank Road, Raja Annamalaipuram, Chennai 600 028.

3. The petitioners claim themselves to be tenants under the 3rd respondent temple, by virtue of a communication given by the then Executive Officer of the temple, dated 11.10.1995, wherein, the Executive Officer has stated that he has come to know that the petitioners have encroached the temple property and are willing to regularize their possession, in respect of the land occupied by them. The petitioners promptly conveyed their willingness to do so, by their representation dated 05.11.1995. But the fact remains, that till date, no order has been passed accepting the petitioners' request for being regularized as tenants nor any amount of rent has been collected from the petitioners. Therefore, it would be a misnomer on the part of the petitioners to term themselves as tenants of the third respondent temple.

4. Be that as it may, earlier, action was initiated by the respondents/Department and a notice under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (the Act), was issued. The petitioners submitted their reply. Thereafter, nothing happened. Subsequently, a public notice was issued by the third respondent/temple, published in the Tamil Daily, dated 13.11.2014, for a meeting to be convened to consider the regularisation of the unauthorised occupation of the temple property and consider all such cases.

5. The petitioners are said to have responded and also submitted representations to the Commissioner, Hindu Religious and Charitable Endowments. Now, the petitioners have been visited with a notice dated 26.08.2016 under Section 78(2) of the Act by the ***3rd** respondent. The notice treated the petitioners as encroachers and the second respondent has called upon the petitioners to appear for an enquiry. The petitioners appeared before the third respondent and the next date of enquiry is fixed on 05.10.2016. In the interregnum, the petitioners have come forward with this writ petition.

6. As pointed out earlier, though there was a communication by the then Executive Officer, on 11.10.1995, agreeing to regularize the encroachment made by the petitioners with respect to the land in question, till date, there is no such regularization of such encroachment. Under the provisions of the Act, unless and until, the Commissioner/Government approves the occupation, the temple has no jurisdiction to part away with the temple property. It is not known under what authority of law, the then Executive Officer of the 3rd respondent temple issued the communication dated 11.10.1995. To say the least, by doing so, he had acted against the interest of the temple. Therefore, as long as the petitioners' occupation has not been regularized or recognized, they are deemed to be treated as encroachers. Therefore, the proceedings initiated by the second respondent invoking Section 78(2) of the Act, cannot be faulted.

7. However, the petitioners are not left without any remedy, since the hearing has been fixed by the third respondent on 05.10.2016. In the said hearing, it is always open to the petitioners to place all the documents before the third respondent to substantiate their plea. It is needless to state that if any submission is made by the petitioners, then the third respondent should consider the same on merits and in accordance with law, and should not mechanically pass orders of eviction, and the order to be passed should deal with all contentions raised by the petitioners and it should be a speaking order.

8. In the light of the above, the prayer sought for by the petitioners is rejected and the writ petition is dismissed. However, liberty is granted to the petitioners to submit all the documents before the third respondent on the next hearing date viz., 05.10.2016 and the third respondent shall consider the documents as well as the oral submission and pass a speaking order on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

Dated: 4.10.2016

*Amended as per order dated 2.12.2016 for being mentioned in W.P.No.33055/2016 by TSSJ

Sd/-

Assistant Registrar(CS IV)

Dated: 8.12.2016

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner,
HR & CE Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai 600 034.

2.The Joint Commissioner,
HR & CE Department,
Nungambakkam,
Chennai 600 034.

3.The Assistant Commissioner/Executive Officer,
Arulmigu Kapaleeswarar Thirukoil,
Mylapore, Chennai 600 004.

+1cc to M/S.K.S.Viswanathan, Advocate Sr.53796
+1cc to the Government Pleader Sr.53658

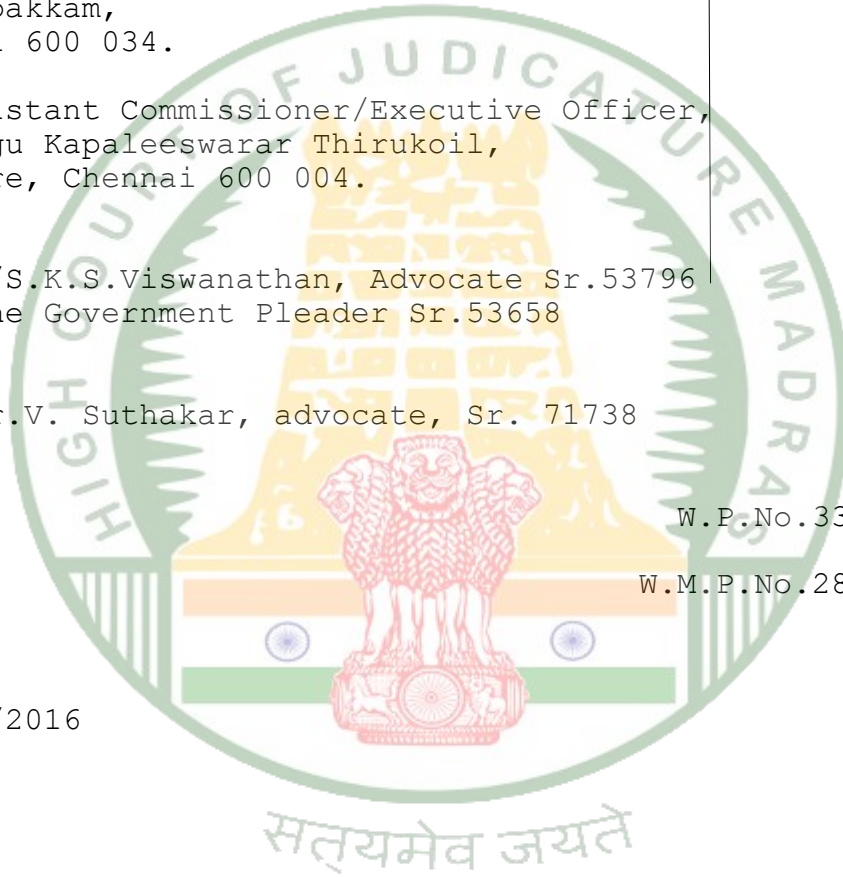
1 cc to Mr.V. Suthakar, advocate, Sr. 71738

To be
substituted
to the order
already
despatched on
7.11.2016

W.P.No.33055 of 2016
and
W.M.P.No.28549 of 2016

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srg 17/10/2016

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